

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JERRY KRUEGER,)	
)	
Claimant,)	IC 04-501791
v.)	
)	
KIT HOMEBUILDERS WEST, LLC,)	ORDER
)	
Employer,)	
and)	FILED MAY 6 2005
)	
IDAHO STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusion of law to the members of the Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant suffered an accident which occurred within the course and scope of his employment for purposes of Idaho Worker's Compensation Law.

2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 6TH day of MAY, 2005.

INDUSTRIAL COMMISSION

/S/_____
Thomas E. Limbaugh, Chairman

/S/_____
R. D. Maynard, Commissioner

ATTEST:

/S/_____
Assistant Commission Secretary

Commissioner James F. Kile dissenting:

After thoroughly reviewing the record and controlling case law in this matter, I respectfully dissent from the majority opinion. In my view, the majority improperly applies the “Coming and Going Rule” as established in Idaho. *Cheung v. Wasatch Electric*, 136 Idaho 895, 897, 42 P.3d 688, 690 (2002); *Clark v. Daniel Morine Const. Co.*, 98 Idaho 114, 559 P.2d 293 (1977).

The Coming and Going Rule, Generally

It is well settled in Idaho that a worker is not entitled to workers’ compensation benefits if he/she is injured while traveling to the work site from his/her residence. *Id.* It is also accepted that workers’ compensation coverage does not extend to a worker going back to his/her residence at the conclusion of work. *Id.* This principle results in a worker being ineligible for workers’ compensation coverage while coming to or going from the worksite.

Over time, several exceptions to the abovementioned rule have been established to soften the harsh application of this principle. These exceptions include:

1. Where the employee is on the employer’s premises in the vicinity of the actual situs of his employment;
2. Where going or returning in some transportation facility furnished by the employer;
3. When transversing the only means of ingress or egress, whether furnished by the employer or by some other party and used with the knowledge and consent of the employer;
4. Where doing some particular job for the employer even though the place where the accident occurred and the cause thereof would be common to any traveler; and

5. Where an employee is traveling to or from the employer's place of business upon some specific mission at his employer's request.

Eriksen v. Nez Perce County, 72 Idaho 1, 235 P.2d 736 (1951).

Therefore, unless the injured worker falls into one of the specific exceptions to the Coming and Going Rule, insurance coverage under the Idaho Workers' Compensation Act is not available.

The Coming and Going Rule, Specifically

In my view of the record and legal standard, Claimant does not fit into one of the recognized exceptions.

1. Claimant had completed his job assignment upon return to his residence from the business trip. Any activity after this point was personal in nature until the Claimant set out on a new job assignment.

2. Even though Claimant was transporting worn-out parts from the customer's premises, he did so at his convenience and his schedule. Not only were the parts in his sole possession but Claimant had complete control over whether he would use the worn or used parts for himself, sell the parts and retain the proceeds, give the parts to someone else, or trash the parts. Claimant could have trashed the parts at any time throughout his trip prior to returning to his residence. Furthermore, at the time of the accident, Claimant was traveling to store the parts, not on his own property, but on a friend's property.

3. Claimant states he was "eventually" traveling to the worksite to begin another business trip after storing the used parts. This is a classic definition of "coming to work." Such an activity is not covered under Idaho workers' compensation law.

4. Claimant was not being paid either in wages or mileage when he was traveling to store the parts.

5. The most important factor that removes Claimant from compensation in this case is the time lag between the completion of his business trip and the activity leading to the accident and injury herein. Claimant was en-route to dispose of the used parts 6 days after finishing his prior business trip. Under the majority decision today, the retention of old, throw-away parts in a claimant's vehicle, will allow a worker to remain a "traveling worker" for as long as some small connection to the original business travel might exist. In my view, the lapse of 6 days places Claimant's travel into the category of a personal errand, which is not related to a business purpose. The employer's directive was to take the used or worn-out parts from the customer's residence, then dispose of them. Claimant had ample opportunities to complete this task before, or close to the time of, finishing his business trip at his residence. Thus, Claimant's actions at the time of the accident were personal and outside the scope of travel for which he was employed.

Conclusion

Clearly, the views of all Commissioners are in the nature of defining the range or scope of a "traveling worker." We have all drawn an imaginary boundary line on this subject. In my view, the restrictions of the Coming and Going Rule dictate a narrow interpretation to enable employers to understand the breadth and scope of their workers' compensation insurance policies. In that event, appropriate decisions can be made by employers and workers to contract for the services and activities that fall within these limited boundaries.

An expanding line of coverage, or a meandering line of coverage in this case, creates confusion on the entire subject of the "traveling worker" within the Coming and Going Rule.

Furthermore, I disagree with the concept of allowing a traveling worker to retain his covered status for insurance purposes after clearly completing the fundamental tasks of the business contract for which he was hired. From the time Claimant arrived home until he was in the auto accident 6 days later, Claimant performed no activity closely related in time and space to his contractual duties with Employer. Therefore, Claimant's traveling employee status ended when he arrived home and ceased all business activity.

For the above reasons, I must respectfully dissent from the decision issued today.

Dated this 6TH day of May, 2005.

INDUSTRIAL COMMISSION

/S/_____
James F. Kile, Commissioner

ATTEST:

/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 6TH day of MAY, 2005, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

Richard S. Owen
P.O. Box 278
Nampa, ID 83653

Max M. Sheils Jr.
P.O. Box 388
Boise, ID 83701

db

/S/_____